

MISSOURI COURT OF APPEALS WESTERN DISTRICT

JOAN BRAY, et al.,

Appellants,

v.

MISSOURI DEPARTMENT OF CORRECTIONS,

Respondent.

DOCKET NUMBER WD78807

Date: July 26, 2016

Appeal from:
Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:
Before Division Four: Alok Ahuja, P.J., Mark D. Pfeiffer, C.J. and J. Dale Youngs, Sp. J.

Attorneys:
Justin K. Gelfand, St. Louis for appellant
Michael J. Spillane, Stephen D. Hawke, Jefferson City for respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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Four Missouri taxpayers filed suit in the Circuit Court of Cole County, alleging that the State's lethal-injection protocol for executing inmates violates federal and state law. The Taxpayers allege that the Department of Corrections is unlawfully purchasing and using pentobarbital produced by a compounding pharmacy in Missouri executions, despite the fact that pentobarbital is an FDA-approved drug which is otherwise commercially available.

The circuit court dismissed the Taxpayers' claims. It found that the Taxpayers lacked standing to challenge the Department's lethal-injection protocol, that the Missouri Supreme Court had exclusive jurisdiction over the case because it involves the death penalty, and that the Taxpayers' petition failed to state a claim upon which relief could be granted because the Department's performance of lawful executions is exempt from the federal and state laws on which the Taxpayers rely.

The Taxpayers appeal.

AFFIRMED.

Division Four holds:

Because the Taxpayers have failed to show that the circuit court erred in finding that their petition failed to state a claim, we affirm without addressing the other grounds for the circuit court's dismissal order.

The Taxpayers raise only procedural objections to the circuit court's conclusion that their petition failed to state a claim. First, they argue that the circuit court failed to assume the truth of the facts alleged in their petition. Nothing in the trial court's judgment indicates that the court failed to assume the truth of the Taxpayers' *factual* allegations, however. The circuit court was

not bound by the *legal conclusions* stated in the petition, and it by disagreeing with the legal claims contained in the petition.

The Taxpayers next argue that the circuit court was required to conduct an evidentiary hearing before dismissing their petition. Normally, however, the circuit court decides whether a petition states a legally viable claim for relief without considering evidence beyond the petition. Moreover, the Taxpayers have failed to identify any evidence which they would have presented at an evidentiary hearing, which would have countered the circuit court's legal conclusion that Missouri executions are not subject to the law and regulations on which Taxpayers rely.

Because the Taxpayers have raised only procedural objections to the circuit court's dismissal, we affirm without expressing an opinion concerning the circuit court's legal conclusion that Missouri executions are exempt from the requirements of the federal and state laws cited by the Taxpayers.

Opinion by: Alok Ahuja, Judge

July 26, 2016

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